

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

REBECCA REED

Claimant

VS.

DANA LAUNDROMAT & DRY CLEANING

Respondent

AND

NATIONAL SURETY CORPORATION

Insurance Carrier

Docket No. 230,297

ORDER

The respondent and its insurance carrier appealed the preliminary hearing Order dated May 4, 1998, entered by Administrative Law Judge John D. Clark.

ISSUES

The Judge ordered the respondent to provide claimant with the names of three physicians from which she would select one to provide treatment. The issues before the Appeals Board on this review are:

- (1) Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
- (2) If so, is claimant's present need for medical treatment related to that accident or an earlier nonwork-related incident?
- (3) Did claimant provide respondent with timely notice of accidental injury?
- (4) Did claimant provide respondent with timely written claim?

FINDINGS OF FACT

After considering the record compiled to date, the Appeals Board finds as follows:

- (1) In September 1996 the claimant, Rebecca Reed, began working for the respondent, Dana Laundromat & Dry Cleaning, as a laundry attendant.
- (2) On May 7, 1997, Ms. Reed injured her back while bending over to remove clothes from a washer. Later that day, Ms. Reed reported the incident to the wife of one of the laundromat's owners.
- (3) The next day, May 8, 1997, Ms. Reed reported the incident to Bijan Raisdana, one of the laundromat's co-owners.
- (4) After being instructed to consult her own physician for treatment, Ms. Reed sought treatment on several occasions at a local hospital's emergency room and with her personal physician, Dr. Kimberly K. Snapp. In January 1998 Ms. Reed consulted with Dr. Douglas T. Davidson for her back.
- (5) The Director's records do not indicate that an accident report was filed with the State Division of Workers Compensation for this injury.
- (6) Ms. Reed mailed a written claim form to the laundromat in late May or early June 1997. Additionally, on December 31, 1997, her attorney sent by certified mail a second claim form to the laundromat.

CONCLUSIONS OF LAW

The preliminary hearing Order should be affirmed.

After observing both Ms. Reed and Mr. Raisdana testify, Judge Clark believed Ms. Reed's testimony that she injured her back while working at the laundromat and, therefore, granted the request for medical treatment. The Appeals Board gives some deference to the Judge's determination of Ms. Reed's credibility and also concludes that she injured her back at work on May 7, 1997.

The Judge specifically found that Ms. Reed provided the laundromat with timely notice of accident and timely written claim. Again, the Appeals Board agrees with those conclusions. First, Ms. Reed's testimony that she told Mr. Raisdana about her back injury on May 8, 1997, the day after she first went to the hospital emergency room for her back pain, is credible. That notice satisfies the requirements of K.S.A. 44-520. Second, the written claim that was mailed to the laundromat on December 31, 1997, was well within the one-year period provided by K.S.A. 44-557 when an employer fails to file the requisite accident report.

Respondent and its insurance carrier question whether Ms. Reed's present need for medical treatment is related to the alleged accident at work or an earlier incident. Based upon the record compiled to date, the Appeals Board concludes that claimant's present need for medical treatment arises from her May 1997 work-related injury. That conclusion is based upon both Ms. Reed's testimony and numerous medical records that indicate she gave several medical providers a history that she injured her back lifting at work. The Administrative Law Judge chose to believe Ms. Reed and in this instance the Appeals Board gives some deference to that determination.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated May 4, 1998, entered by Administrative Law Judge John D. Clark should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
Scott J. Mann, Hutchinson, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director